IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO.2613 OF 2004

M/s.Jaslok Hospital and Research
Centre, A Charitable Trust registered
under the Bombay Public Trust Act,
1950 and having office at 15,
Dr.G.Deshmukh Marg, MUmbai-400 026. .. Petitioner

v/s.

1. Union of India
Through the Secretary,
Ministry of Health and Family
Welfare, Directorate General
of Health Services, Nariman Bhawan,
New Delhi- 110 003.

2. Union of India
Through the Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi-110 001.

3. Dy.Director General (Medical)
Directorate General of Health
Services (M.G.Section),
Ministry of Health & Family
Welfare, Nariman Bhawan,
New Delhi-1.

4. Director of Health Services,
Govt.of Maharashtra,
St.George Hospital Compound,
Govt.Dental College Building,
4th Floor, Mumbai-400 001.

5. Commissioner of Customs
(Imports),
Air Cargo Complex, Sahar,
Andheri (East), Mumbai 400099.

6. Commission of Customs,
Jawahar Custom House,
Nhava Sheva, Post Uran,
Dist. Raigad,
Maharashtra-400 707. .. Respondents

Mr.V.Shreedharan with Mr.Anupam Dighe i/by M/s.DSK
Legal for petitioner.

Mr.B.A.Desai, Addl.Solicitor General with Mr.R.V.Desai, senior counsel and Mr.Suresh Kumar i/by Mr.T.C.Kaushik for respondents.

CORAM : R.M.LODHA AND
J.P.DEVADHAR, JJ.

DATED : 17th December, 2004

ORAL ORDER (Per R.M.Lodha, J.)

Heard Mr.V. Shreedharan, the learned counsel for the petitioner and Mr.B.A.Desai, the learned Additional Solicitor General for the respondents.

2. The petitioner obtained Customs Duty Exemption Certificate (CDEC) for import of various hospital equipments under notification No.64/88-Cus. The CDECs certified the petitioner covered by the para 2 of the hospitals specified in the table annexed to the Ministry of Finance notification No.64/88-Cus dated 13.01.1988. The said CDECs were cancelled/withdrawn by the Director General of Health Services on 14.11.2000 on the ground that the petitioner failed to fulfil the conditions of para 2(b) of the aforesaid notification. The petitioner then made a representation to the Minister of Health and Welfare on 24.9.2003 for categorisation of the petitioner under para 1 of the table of the said notification. The said representation came to be rejected by the Director General of Health Services vide order dated 18.3.2004. In the writ petition, the petitioner

has challenged the order dated 14.11.2000 cancelling/withdrawing CDECs and the order dated 18.3.2004 declining to categorise the petitioner under para 1 of the table of the notification No.64/88-Cus. However, during the course of motion hearing, the learned counsel did not press the prayer for setting aside the order dated 14.11.2000 and confined the challenge to the order dated 18.3.2004.

3. The details of the medical equipments that were imported by the petitioner for which CDECs were obtained are thus-

Sr.No.	Medical Equipment	B/E No. & Date
1.	Spare parts for Gamma Counting system T-6278/18,05.89	
2.	Quinton Computerized Stress Test Mill System 128 B/E dated	Inv.No.PIQTN-06.08.89
3.	Haematology Analyser Model PC-604 T-8685/21.12.88	
4.	V.P.Super System T-3231/09.08.89	
5.	Cine Film Analyser Model No.Tagarno 35 CX T-5274/14.02.89	
6.	Quantum 2000 Color Flow Doppler Angio Dynograph T-7045/20.02.92	
7.	ECG 5 Channel System 8000 ECG 2 Channel System 4000 Evoked Potential System	T-356/01.06.89

8.	NEC SAN EI Medical Electrical Equipment	T/4765/14.03.89
9.	Extracorporal Lithotriper Sonolith 3000	T-355/01.06.89
10.	Extracorporal Lithotriper Sonolith 3000	T-041/01.07.89
11.	16 Bedded ICCU Patients Monitoring System	T-6615/17.01.90
12.	Flouroscence Model Lobaorlux Microscope	T-8907/24.04.90
13.	Medilog 4000 Ambulatry ECG System Holter Monitor	T-7308/10.12.89
14.	Uvicon 930 pectro Photometer	T-3414/11.01.94
15.	A-Klinograph 4/4 (Part Shipment) Sr.No.78901	T-612/03.12.90
	A-Klinograph 4/4 Sr. No.78901	T-614/03.12.90
16.	Mingograph - 7 Sr.No.2198, Model No.E-267	T-6691/16.10.93
17.	Fibre Optics Endoscope Sr.No.2198	T-1773/06.04.92
18.	A) Biopolar Coagulator & Forceps	T-1082/04.02.91
	B) Model No.ESU X-10 (Bovie) Sr.No. 568654	T-7649/23.12.91
	C) 400-CT (Bovie) Sr.No.568687	T/2218/11.11.91

4. The CDECs issued to the petitioner relate to the import of medical equipments for the period from the years 1988 to 1994. All along, until 2003, the petitioner accepted and was rather satisfied of it being categorised under para 2 of

the table to the notification No.64/88-Cus. It is only after the said CDECs were withdrawn/cancelled by order dated 14.11.2000 and almost three years thereafter that representation came to be made by the petitioner to the Minister of Health and Family Welfare that it be categorised under para 1 of the table to the notification No.64/88-Cus. Since the learned counsel for the petitioner did not raise any contention about the order dated 14.11.2000 withdrawing/cancelling that CDECs which were obtained by the petitioner on the footing that it fulfilled the conditions of para 2 of table 2 of the aforesaid notification, we assume the correctness of the order dated 14.11.2000. Almost after 15 years of the petitioner having been categorised under para 2 of table 2 of the said notification that the petitioner made a representation for its categorisation under para 1 of table 2 of the said notification. The Director General of Health Services rejected the petitioner's representation on the following grounds:-

> "Under notification 64/88, category 1 hospital denotes "all such hospitals as may be certified by the said Ministry of Health and Family Welfare, to be run or substantially aided by such charitable organisation as may be approved, from time to time, by the Ministry of Health and Family Welfare. M/s.Jaslok Hospital & Research Centre, Mumbai was not certified under category 1 of the notification 64/88 customs.

The state government while recommending the applications for CDEC under 64/88 notification, did not categories the institution as a charitable hospital.

The state government recommended the institution under category 2 wherein it was certified that the hospital is providing free treatment to 40 percent of its OPD patients and that all indoor patients are treated free whose income is less than Rs.500/- per month.

The institution itself opted for categorising under category 2 of notification 64/88. It was not thrust upon them. The institution to this effect above an undertaking.

They accepted the CDECs issued to the institution under para-2 of the table of the notification without any objection at that point of time.

Once a beneficiary under category 2 of 64/88 notification, the Mediwell judgement of the Hon'ble Supreme Court held that there is a continuing obligation on the part of the beneficiaries to fulfill the conditions based on which the eligibility of the institution was assessed. Since the institution failed to substantiate fulfillment of the conditions the CDEC's issued under 64/88 cus notification were withdrawn."

5. We hardly find any justifiable ground to interfere with the impugned order dated 18.3.2004 declining to recategorise the petitioner under para 1 of the table to the notification afore-referred. The State Government recommended the petitioner under para 2 wherein it was certified that the hospital has provided free treatment to 40% of its OPD patients and that all indoor patients were treated free whose income was less than Rs.500/-

per month. The reasons assigned by the Director General of Health Services cannot be said to be irrelevant or superfluous for declining the petitioner's prayer for recategorisation under para 1 of the table of notification No.64/88-Cus after 15 years of the petitioner having been categorised under para 2 of the table of the said notification. The fact remains that from the years 1988 to 1994 when the CDECs were issued until the representation was made on 24th September, 2003, at no point of time, the petitioner had any grievance for its non-categorisation under para 1 of the table of the said notification and its categorisation under para 2.

6. The contention of the learned counsel for the petitioner that the petitioner had not applied for its categorisation under para 2 of table of notification 64/88-Cus and that it only applied for issuance of certificate as a charitable institution under notification 64/88-Cus does not deserve to be accepted because (a) the State Government recommended the petitioner's case only under para 2 of the table of the said notification; (b) the CDECs were issued to the petitioner under para 2 of the table of the notification and (c) the petitioner accepted the said CDECs without any objection.

7. The contention raised by the petitioner that the application for categorisation under para 1 of the table of the aforesaid could be made at any time is noted to be rejected. The petitioner by its conduct has disentitled itself from contending that it should be categorised under para 1 of the table of the aforesaid notification. The application made by the petitioner for CDECs under notification 64/88-Cus was considered and granted under para 2 of the table of the said notification and the said categorisation was accepted by the petitioner. It is too late in the day after the petitioner accepted the CDECs granted under para 2 of the table of the notification from the years 1988 to 1994 to contend in the year 2003 after the CDECs were withdrawn for non-fulfilment of the conditions of para 2 of the table that it be re-categorised under para 1 of the table of the said notification.

8. Yet another contention of the learned counsel for the petitioner that the petitioner was already categorised and certified by as a charitable organisation and approved as such under notification No.8/Cus dated 6.1.78 and by virtue of sections 8 and 24 of the General Clauses Act, the said certificate is valid for the purposes of

notification No.64/88-Cus is wholly misplaced and misconceived. The certificate that was granted to the petitioner as a charitable organisation under notification No.8/Cus dated 6.1.78 was operative for the purposes of the notification No.8/Cus only. By virtue of sections 8 and 24 of the General Clauses Act, the certificate granted to the petitioner as a charitable organisation under notification No.8/Cus dated 6.1.78 cannot be said to be the certificate as contemplated under para 1 of the table of notification 64/88-Cus. Sections 8 and 24 of the General Clauses Act have no application whatsoever.

9. Having considered all the aspects of the matter, we do not find any justifiable ground for invocation of extraordinary jurisdiction.

10. However, before we close, we may notice the judgments cited by the learned counsel for the petitioner during the course of arguments. He cited Anchor Pressings (P) Ltd. v. Commissioner of Income-tax, (1986) 161 ITR 159, Commissioner of Income-tax v. Archana R. Dhanwatay (Smt.), (1982) 136 ITR 355, Commissioner of Income-tax v. Mahalakshmi Textile Mills Ltd., (1967) ITR 710, Auto Tractors Ltd. v. Collector of Customs (Appeals), 1989(39) ELT 494, Marathwada Cancer

Hospital and Research Centre Pvt.Ltd. & anr. v. Union of India & ors., Writ petition No.2334 of 2002 dismissed as withdrawn by the Aurangabad Bench vide order dated 29th July, 2003, H.C.L.Limited v. Collector of Customs, New Delhi, 2001 (130) ELT 405, Lord Krishna Textile Mills v. Workmen, (1961) 3 SCR 204, Birla Institute of Technology v. Collector of Customs, 1991 (56) ELT 753, Poonjabhai Vanmalidas v. Commissioner of Income Tax, Ahmedabad, 1992 Supp (1) SCC 182, Mohan Chowdhury v. Chief Commr. Tripura, (1964) 3 SCR 442, Tullow India Operations Ltd. v. Commissioner of Customs, Mumbai, 2004 (165) ELT 218 and U.P. Avas Evam Vikas Parishad and anr. v. Friends Coop. Housing Society Ltd. and anr., 1995 Supp (3) SCC 456. None of these decisions has any application to the facts of the present case and therefore, we do not consider it necessary to deal with the said judgments at length.

11. Writ petition does not deserve to be admitted.

Dismissed in limine.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)